IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 29TH OCTOBER 2007 / 7TH KARTHIKA 1929

Crl.MC.No. 3300 of 2007()

CC.202/2007 of JUDL.MAGISTRATE OF FIRST CLASS, PARAVOOR
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PETITIONER: ACCUSED

DR. G.PRATHAPA VARMA THAMPAN
EX.M.L.A KRISHNAKRIPA, THEVALLY PALACE WARD
THEVALLY,KOLLAM DISTRICT.

BY ADV. SRI.B.RAJEEV KOYICKAL

RESPONDENTS: COMPALAINANT & STATE
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1. STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR
HIGH COURT OF KERALA,ERNAKULAM.

2. S.SHEREEF,SUB INSPECTOR OF POLICE
CHATHANNOOR POLICE STATION
CHATHANNOOR, KOLLAM.

BY ADV. SRI. GIKKU JACOB, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 29/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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Crl.M.C. No.3300 Of 2007

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Dated this the 29th day of October, 2007

ORDER

The petitioner is the 1st accused and he faces allegations for the offences punishable, inter alia, under Sections 283, and 188 read with 149 IPC. The crux of the allegations against the petitioner is that he along with some others constituted an unlawful assembly of persons who illegally obstructed traffic on the public road- National Highway. The alleged incident took place on 12.2.07. The crime was registered on the very same date. Investigation was conducted. Final report has been filed. Cognizance has been taken by the learned Magistrate. The learned Magistrate has issued warrant of arrest against the petitioner to secure the arrest of the petitioner.

2. The petitioner has come to this Court with a prayer to issue directions invoking powers under Section 482 to quash the proceedings against him.

3. What are the reasons? The learned Magistrate submits that the allegations raised against the petitioner are all false and are prompted by improper motives. In these circumstances, it is prayed that the prosecution may be quashed.

4. The allegations in the FIR clearly shows that there was

obstruction of traffic on the National Highway by the accused persons including the petitioner herein. The petitioner appears to be a politically important person. He was the former MLA of that constituency. Be that as it may, I am unable to find any tangible data to prove that there was no obstruction on the public road and to come to the conclusion that the allegations are false and that though it was called a movement to obstruct traffic, as a matter of fact, there was no obstruction of traffic. Invoking powers under Section 482 Cr.P.C., this Court cannot embark on an endeavour to consider the acceptability of the allegations. Even admittedly the demonstration by obstruction of traffic was there. Whether it was only a token demonstration or complete obstruction as alleged, the controversy cannot be obviously resolved in this proceedings under Section 482 Cr.P.C.

5. The learned counsel for the petitioner contends that if, as a matter of fact, there were obstruction, the obstructors would have been forcibly removed when they caused obstruction. I do not find much force in this contention as it is common knowledge that such obstruction cannot be stopped with minimum action by the Police. In fact the FIR shows that prompt action could not be taken as sufficient Police personnel were not available at the scene. The learned counsel for the petitioner submits that the learned Magistrate has unjustifiably

issued warrants of arrest to secure the presence of the petitioner.

6. The learned counsel for the petitioner submits that there was absolutely no necessity to issue warrant of arrest. The petitioner is a persons known locally and a political activist. He will not flout orders of the court. Offences are bailable, it is submitted. In these circumstances, the petitioner is willing to surrender before the learned Magistrate and seek regular bail. But he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. He therefore prays that appropriate directions under Section 482 Cr.P.C may be issued in favour of the petitioner.

7. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

8. This application is, in these circumstances, dismissed, but

with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

9. In the peculiar facts and circumstances of this case, I am satisfied that there can be a direction that the warrant of arrest pending against the petitioner in C.C.No.202/2007 shall not be executed till 12.11.07. On or before that date the petitioner can appear before the learned Magistrate and seek regular bail.

(R.BASANT, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE